TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 267.

THE CORRALITOS COMPANY, APPELLANT,

vs.

THE UNITED STATES AND THE APACHE INDIANS.

APPEAL FROM THE COURT OF CLAIMS.

FILED APRIL 20, 1899.

(17,374.)

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(17,374.)

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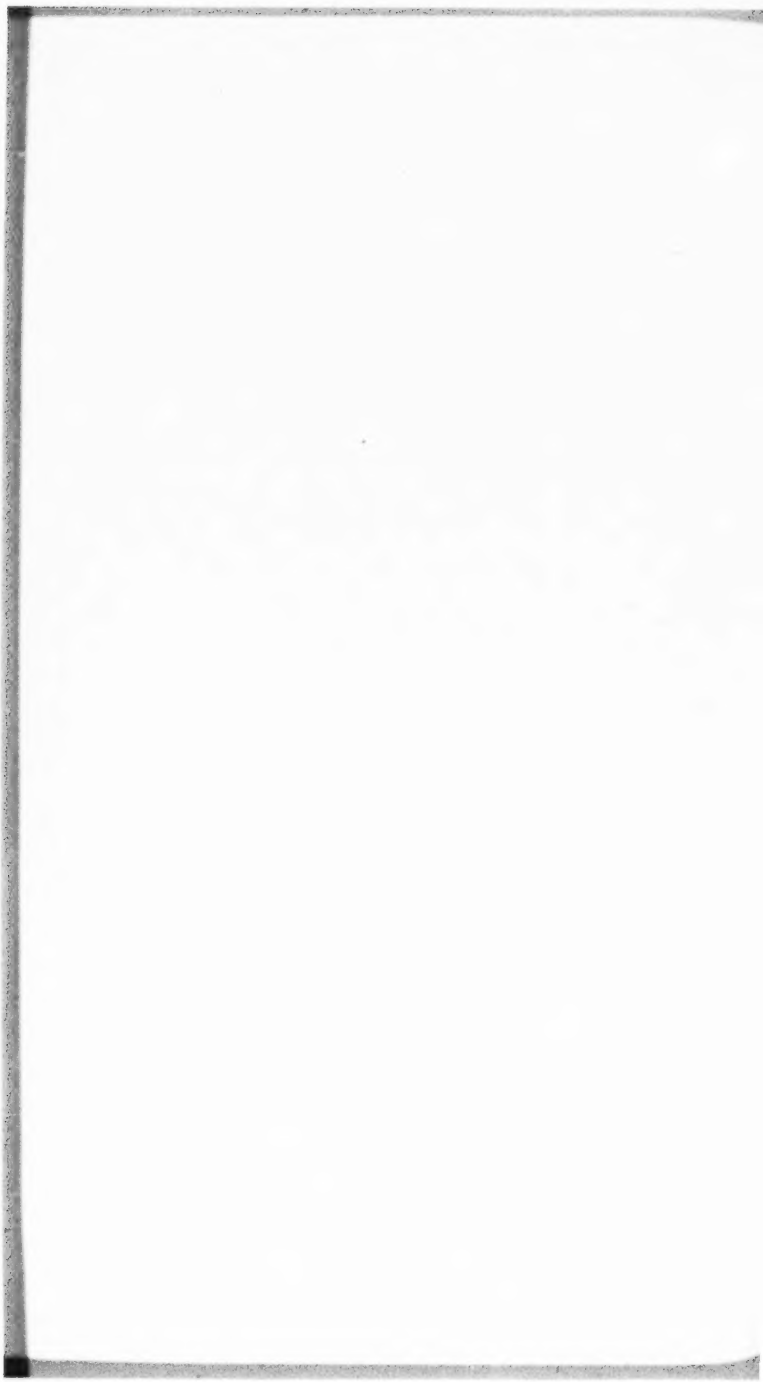
THE UNITED STATES AND THE APACHE INDIANS.

APPEAL FROM THE COURT OF CLAIMS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.



1 In the Court of Claims.

THE CORRALITOS COMPANY		
vs.		No. 8246.
THE UNITED STATES and THE APACHE INDIANS.		Indian Depredation.

I.—*Petition.*

The original petition in this cause was entitled "The Corralitos Stock and Mining Company" and was filed September 6, 1892.

On motion of claimant's counsel and by leave of court, an amended petition, changing the caption of suit to the "Corralitos Company," was filed March 2, 1894, and is as follows:

Amended Petition.

To the honorable Chief Justice and judges of the Court of Claims:

I. Your petitioner, the said company, chartered under
(J. R.) the laws of the State of New York, and doing business in the State of Chihuahua, county of Guleana, Republic of Mexico, respectfully represents:

II. That this petition is filed and the jurisdiction of this court is invoked, by virtue of an act of Congress, entitled "An act to provide for the adjudication and payment of claims arising from Indian depredations," approved March 3, 1891.

III. That at the time the grievances hereinafter described were committed, namely, in the years 1881 and 1882, your
(J. R.) petitioners were citizens of the United States, and resided in the city of New York, State of New York.

IV. That, in 1881 and 1882, your petitioners were the owners of the following property: 1,300 beefs, 3 to 6 years old, fat and in good condition; 90 head of horses, geldings, American and half-breed; 20 head of mules; 10,000 head of sheep; 150 head of stock
2 cattle; 100 head of stock horses; 3 carts; 6 yoke of oxen, tools and camp outfit; which was stolen and carried off under the following circumstances:

The Apache Indians of which Ju Geranime, Little Chief and others were chiefs, were located at that time in the Territory of New Mexico and Arizona. Our ranch at that time was the nearest large ranch to them; they frequently camped for weeks and months on our lands, and drove the stock into the Sierra Madre, and killed them or drove them out of the State of Chihuahua into New Mexico and Arizona. The county of Guleana, in Chihuahua, Republic of Mexico, is adjoining New Mexico and Arizona; the principle depredations were committed in 1880 and 1881 when the Indians had left the reservation, and stayed for several months on our grant, which is about fifty miles square.

V. That the property thus stolen and carried off by Apache In-

dians, then in amity with the United States, consisted of the following, with the cash value of each item at the time when, and at the place where, stolen :

April 1880, 1,300 beeves, 3 to 6 years old, @ $28.....	$36,400 00
The beeves were fat and in good condition.	
90 head of horses, geldings, American and half-breed, @ $75.....	6,750 00
20 head of mules @ $75.....	1,500 00
10,000 head of sheep @ $2.50.....	25,000 00
150 head of stock cattle @ $12.....	1,800 00
100 head of stock horses @ $25.....	2,500 00
3 carts @ $100.....	300 00
6 yoke of oxen @ $60.....	360 00
Tools and camp outfit.....	100 00
Of the aggregate value of.....	$74,710 00

3 VI. The said property was stolen and carried off by said Indians without cause or provocation on the part of your petitioner or his agent; and has not been returned or paid for.

VII. That this claim has not been filed in the Department of the Interior, or presented to Congress, or any subordinate authority.

VIII. That no part of said claim has been assigned to any one; that the amount is justly due to your petitioner; that there are no credits or offsets thereto, and therefore the petitioner claims from the United States and the said Indians the sum of seventy-four thousand seven hundred and ten dollars, and demands judgment upon the law and the facts for said sum, according to the act of March 3d, 1891, on this subject, and for such further or other relief as the nature of this case may require.

GEO. B. ZIMPLEMAN,
Ag't Corralitos Co.

STATE OF TEXAS, }
County of Travis. }

Before me, S. D. de Condova, a notary public for said county and State, personally appeared Geo. B. Zimpleman, agent of the Corralitos Co., who, being duly sworn, says that he is the petitioner named in the foregoing petition, and that he has read over said petition and understands the same, and that the matters therein stated are true to the best of his knowledge and belief.

—— ——.

Subscribed and sworn to before me this 29th day of August, 1892.

S. D. DE CONDOVA,
Notary Public, Travis County, Texas.

CRITCHER & CRITCHER, *Attorneys.*

4 THE CORRALITOS COMPANY
vs.
THE UNITED STATES and THE APACHE INDIANS. } No. 8246.

Plea in Bar. Filed November 29, 1897.

Now comes the assistant attorney general and, after leave of the court first had and obtained, for plea to the declaration filed herein says that the claimant ought not to have and maintain his aforesaid suit in this cause because the depredation complained of is alleged to have occurred in the Republic of Mexico, beyond the jurisdiction of the United States and courts thereof, and that this court has not jurisdiction to entertain this suit.

And this the defendants are ready to verify.

JOHN G. THOMPSON,
Assistant Attorney General.

5 THE CORRALITOS COMPANY
vs.
THE UNITED STATES and THE APACHE INDIANS. } No. 8246.

Demurrer to Plea. Filed January 8, 1898.

And now comes the plaintiff, by John Critcher, his attorney, and says defendants' plea in bar is bad in substance.

THE CORRALITOS COMPANY,
By JOHN CRITCHER, *Their Attorney.*

6 IV.—*Opinion of the Court.*

MARCH 28, 1898.

DAVIS, J., delivered the opinion of the court:

The petition in this case avers that the plaintiff is a "company chartered under the laws of the State of Colorado and doing business in the State of Chihuahua, county of Galena, Republic of Mexico;" that "at the time the grievances hereinafter described were committed * * * your petitioners were citizens of the United States and resided in the city of New York."

The petition then alleges the ownership of certain property stated to have been stolen by Indians who "were located at that time in the Territory of New Mexico and Arizona," and which (after the theft) was taken into the United States. The substance of the petition (so far as important at this time) is that Indians from the United States stole plaintiff's property in Mexico and took it from Mexico into the United States.

To this petition defendants plead in bar: "Because the depredation complained of is alleged to have occurred in the Republic of Mexico, beyond the jurisdiction of the United States and courts thereof, and that this court has not jurisdiction to entertain this suit."

Plaintiffs demur to this plea.

The proposition presented by the petition is thus correctly stated by defendants: "That the United States shall make restitution to the claimant company for the taking of its property on Mexican soil by Indians who sustained tribal relations with the United States," and that this court has jurisdiction to enter a judgment for the amount of this loss against the United States and the defendant Indians.

The statute under which the claim is presented (26 Stat. L., p. 851) confers upon this court authority "to inquire into and finally adjudicate" all claims of certain classes. The first class is the only one important to our present purpose; it is thus defined: All claims for property of citizens of "the United States taken or destroyed by Indians belonging to any band, tribe, or nation in amity with the United States, without just cause or provocation on the part of the owner or agent in charge, and not returned or paid for."

Therefore the plaintiff must be a citizen of the United States; his property must have been taken or destroyed by Indians, and the band or tribe to which the Indians belonged must have been, at the time, in amity with the United States.

There is in the act no limitation in terms as to the place of taking or destruction. Why should there be? The general principle of law is that the statutes of a country do not run beyond its
7 territorial jurisdiction except upon its merchant vessels upon the high seas, usually upon the vessels of its navy, and in some cases (provided for by treaty) upon merchant vessels and citizens within the jurisdiction of the few countries where the privilege of "extraterritoriality" exists. None of these exceptions attach to the Republic of Mexico; her rights in the family of nations are equal to those of any other power; her duties and responsibilities are the same. The United States (unless for some express agreement between the two nations) may not discipline or control Indian tribes within the Mexican territory, and, being without power to enter that territory in time of peace without Mexico's consent, is without direct responsibility for what may there occur. Wrongs sustained by a citizen of the United States while in Mexico can only be remedied through the executive branch of the Government and do not present causes of action in the courts. If citizens of the United States resort to Mexico, they may expect and their Government may demand for them equality of safety and protection with the citizens of that country, an unbiased administration of the laws in relation to them and their property, and any special advantages (if such there happen to be) expressly reserved by treaty. Beyond this there is no right.

It is not alleged that this plaintiff was subjected to any loss other than that which occurred at the hands of Indians within the territorial jurisdiction of Mexico; to remedy that loss he must resort to the Mexican courts, if the law of that Republic happen to provide a remedy through its judiciary for such misfortunes. Failing that, an appeal might possibly be made upon the Mexican government through the executive department of the Government of the United States, if the facts so authorize, and that department deem such an

appeal advisable and wise. In any event, the matter in dispute does not fall within the jurisdiction of this court.

This conclusion, drawn from the laws governing the responsibilities of nations to each other, and the limitation of the territorial responsibility of any nation, is in this instance absolutely enforced by the statute of 1891, giving this court jurisdiction over Indian depredation cases. This act is purely remedial in its nature; it provides a forum where certain alleged rights may be litigated, but it creates no rights except in so far as it imposes a liability upon the United States for plaintiff's benefit. To find the wrongs which it hopes to remedy we must turn to the act of 1834; so long have these contentions been before the Government, in some one or more of its three branches. (Act of June 30, 1834; 4 Stat. L., 731, sec. 17.) In this act it is provided in substance:

That if any Indian or Indians belonging to any tribe in amity with the United States shall, within the Indian country, take or destroy the property of any person lawfully within such country, or shall pass from the Indian country into any State or Territory inhabited by citizens of the United States, and there take, steal, or destroy any * * * property belonging to any citizen or inhabitant of the United States, such citizen or inhabitant * * * may make application to the proper * * * agent, * * * who, upon being furnished with the necessary documents and proofs, shall, under the direction of the President, make application to the nation or tribe to which said Indian or Indians shall belong for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction in a reasonable time, not exceeding twelve months, it shall be the duty of such * * * agent * * * to make return of his doings to the Commissioner of Indian Affairs, that such further steps may be taken as shall be proper, in the opinion of the President, to obtain satisfaction for the injury; and in the meantime, in respect to the property so taken, stolen, or destroyed, the United States guarantee to the party so injured an eventual indemnification: *Provided*, that if such injured party * * *
8 shall in any way violate any of the provisions of this act by seeking or attempting to obtain private satisfaction or revenge he shall forfeit all claim upon the United States for such indemnification.

We have held (*Leighton v. The United States*, 29 C. Cls., p. 288) "the claim in every case, under the act of 1834, arose from the taking or destruction of the property of a citizen or an inhabitant by Indians belonging to some tribe in amity with the United States, and no rights, other than the mere right of having claims investigated, have been given to claimants except under and by virtue of that general act, unless other rights accrued by reason of treaty obligations."

Every claim here pending under the remedial statute of 1891 must turn back to the statute of 1834 to establish a right of recovery. This act limits the claims to those arising from depredations committed by "any Indian or Indians belonging to any tribe in amity with the United States," and fixes the place of loss as "within the

Indian country." or any "State or Territory inhabited by citizens of the United States." The purpose of the act is thus defined in the title, "An act to regulate trade and intercourse with the Indian tribes and to preserve peace on the frontiers." The first section provides "that all that part of the United States west of the Mississippi, and not within the States of Missouri and Louisiana or the Territory of Arkansas, and also that part of the United States east of the Mississippi river, and not within any State to which the Indian title has not been extinguished, for the purposes of this act, be taken and deemed to be the Indian country." Here we get the official definition of the oft-recurring phrase "the Indian country."

The act then provides for a license to trade with the tribes "in the Indian country," to be issued by "a superintendent of Indian affairs, or Indian agent, or subagent," the applicant to give bond that he will "faithfully observe all the laws and regulations made for the government of trade and intercourse with the Indian tribes and in no respect violate the same." The superintendent of the district is authorized to revoke these licenses "whenever the person licensed shall, in his opinion, have transgressed any of the laws or regulations provided for the government of trade and intercourse with the Indian tribes, or that it would be improper to permit him to remain in the Indian country." The act prohibits trade within the Indian boundaries except under certain conditions. It empowers the agent to refuse licenses subject to an appeal to the Commissioner of Indian Affairs. It authorizes the President to prohibit the introduction of goods into the Indian country, to revoke licenses to trade with any Indian tribe, and to prohibit trade with them. It directs that licenses shall only be granted to citizens of the United States, and it makes "a foreigner" subject to punishment if he remain in the "Indian country" without the prescribed permission.

Section 18 authorizes superintendents, agents, and subagents, within their respective districts, to take depositions and to administer oaths. Section 19 authorizes the superintendents, agents, and subagents to endeavor to procure the arrest and trial of all Indians accused of committing any crime, offense, or misdemeanor, and all other persons who may have committed crimes or offenses within any State or Territory and have fled into the Indian country, either by demanding the same of the chiefs of the proper tribes, or by such other means as the President may authorize; and the President may direct the military force of the United States to be em-
9 ployed in the apprehension of such Indians, and also in preventing or terminating hostilities between any of the Indian tribes.

Sections 20 and 21 control the sale of spirits, section 23 authorizes the employment of the military forces of the United States in the apprehension of certain persons in the "Indian country," section 25 extends the criminal laws of the United States to the "Indian country." Section 16 of the act provides that where in the Indian country a white person in the commission "of any crime, offense, or misdemeanor" shall injure the property of any friendly Indian he shall pay to the Indian twice the value of the property, and if

unable to pay, then the United States shall pay, provided the Indian or any of his nation have not sought private revenge or "attempted to obtain satisfaction by any force or violence."

Other citations are unnecessary. The act in all its parts is harmonious and every section shows clearly that Congress was legislating only for Indian tribes within the territorial jurisdiction of the United States. It is impossible to assume that the Congress would attempt to make such detailed regulations as to Indians outside the United States, either in Mexico or Canada, or attempt to prescribe the method of enforcement in those countries of a statute of the United States or assume in these foreign jurisdictions to provide officers to superintend that enforcement within those friendly nations.

What is understood in the Department of the Interior as the Indian country is well shown in the following letter from the honorable Secretary of the Interior, dated May 1, 1879:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *May* 1, 1879.

The honorable the Secretary of War.

SIR: I am in receipt of your request of the 30th ultimo for a reference to the laws and statutes of the United States which declare the Indian Territory under its present boundaries "Indian country," so as to subject it to the intercourse laws and make it lawful to expel intruders therefrom by military force, if necessary, under section 2147 of the Revised Statutes.

The whole of this territory was included in the statute of March 30, 1802, declaring what portion of the United States shall be deemed Indian country, which was re-enacted in terms by the first section of the act of June 30, 1834. (Stats. 4, p. 729.)

The intervening act of May 28, 1830, authorized the President of the United States to cause so much of any territory west of the Mississippi, not included in any State or organized Territory, as he might judge to be necessary to be set off and divided into districts for the reception of Indian tribes. This territory was especially selected and reserved by the Executive for the purposes prescribed, and has ever since been known and organized as the "Indian country," no States or organized Territories having been created therein. In the meantime, by treaty of May 6, 1828 (article 2, Stats. 7, p. 311), which was reaffirmed by the treaty of December 28, 1835 (Stats. 7, p. 479), the United States ceded to the Cherokee nation what is now known as the Cherokee country in said Territory, and the jurisdiction of which is still retained by said nation under treaty of July 19, 1866 (Stats. 14, p. 799, art. 16), although a large portion of said lands are located by other Indians under the provisions of the latter treaty.

The next cession in order of time was made to the Creek nation by treaty of February 14, 1833. (Stats. 7, p. 417, art. 21.) This tract was situated immediately south of the Cherokee lands, extending westward to the Mexican boundary. Next came the Choctaw and Chickasaw cession of June 22, 1855 (Stats. 11, p. 611), by which

the residue of what is now the Indian Territory was ceded to those tribes.

The claim, therefore, does not fall within our jurisdiction either under the broad principles of national or international responsibility or under the jurisdiction expressly granted by the act of 1891 as interpreted by the act of 1834.

Plaintiff's demurrer to plea in bar overruled. Plea in bar sustained. Petition dismissed.

10 V.—*Judgment of the Court.*

THE CORRALITOS COMPANY
vs.
THE UNITND STATES and THE APACHE Indians. } No. 8246. Indian Depredation.

At a Court of Claims, held in the city of Washington on the 28th day of March, 1898, judgment was ordered to be entered as follows:

The claimant's demurrer to defendants' plea in bar was overruled and defendants' plea in bar was sustained, and it was ordered, adjudged, and decreed that the petition of the claimant be dismissed.

BY THE COURT.

11 VI.—*Application for and Allowance of Appeal.*

THE CORRALITOS COMPANY
vs.
THE UNITED STATES and APACHE INDIANS. } No. 8246. Indian Depredation.

The Corralitos Company, by John Critcher, its attorney, makes application to the honorable Court of Claims for an appeal of the case of The Corralitos Company *vs.* The United States and The Apache Indians to the Supreme Court of the United States.

JOHN CRITCHER,
Attorney of Record of said Company.

Filed May 9, 1898.

MARCH 6, 1899.

Mr. Critcher, for the claimant, presented the application for the allowance of appeal herein, filed May 9, 1898, and it was ordered that the appeal be allowed as prayed for.

BY THE COURT.

12 In the Court of Claims.

THE CORRALITOS COMPANY
vs.
THE UNITED STATES and THE APACHE INDIANS. } No. 8246. Indian Depredation.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the plead-

(J. R.) ings in the above-entitled cause, of the opinion of the court, of the judgment of the court dismissing the petition, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set
Seal Court of Claims. my hand and affixed the seal of said court, at Washington, this 17th day of March, 1899.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: File No., 17,374. Court of Claims. Term No., 267. The Corralitos Company, appellant, *vs.* The United States and The Apache Indians. Filed April 20th, 1899.

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JAMES H. McKENNEY,
Clerk

No. 267.
Brf. of Critcher for Appellant.

Filed April 7, 1900.

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1899.

THE CORRALITOS COMPANY,
Appellant,
vs.
THE UNITED STATES and the
APACHE INDIANS.
No. 267.

BRIEF FOR APPELLANT.

JOHN CRITCHER,
Counsel for Appellant.

MILLIS, LAW PRINTER, 515 E STREET, N. W., WASHINGTON, D. C.

Supreme Court of the United States.

OCTOBER TERM, 1899.

THE CORRALITOS COMPANY, *Appellant*,

vs.

THE UNITED STATES AND APACHE INDIANS.

No. 267.

BRIEF OF JOHN CRITCHER, COUNSEL FOR APPELLANTS.

The petition avers that the plaintiff is a company, chartered under the laws of the State of New York, doing business in the State of Chihuahua, Republic of Mexico; that the petition is filed under an Act of Congress entitled "An Act to provide for the adjudication and payment of claims arising from Indian depredations, approved March 3d, 1891;" that in 1881 and 1882, when these depredations were committed, your petitioners were citizens of the United States; that they were the owners of cattle, horses, mules, sheep and so forth, of the value of $74,710.00; that this property was stolen and carried off by Indians from New Mexico and Arizona, and taken from Mexico into the United States.

To this petition defendants plead in bar, "because the depredation complained of is alleged to have occurred in the Republic of Mexico beyond the jurisdiction of the United States, and courts thereof, and that this court has

not jurisdiction to entertain this suit." To this plea the plaintiff demurred. The Court of Claims overruled the demurrer, sustained the plea in bar, and dismissed the petition.

There is but one question before the court. Can the plaintiffs under the Act of Congress of March 3, 1891, recover the value of their property taken in Mexico by Indians from New Mexico and Arizona, and thence taken by the said Indians into the United States?

The jurisdiction of the Court of Claims is conferred by Act of March 3, 1891. It gives the court jurisdiction of "*all* claims for property of citizens of the United States taken or destroyed by Indians belonging to any band, tribe, or nation in amity with the United States, without just cause or provocation on the part of the owner or agent in charge, and not returned or paid for." The court has jurisdiction of all claims that fulfill these conditions. The jurisdiction is plenary. The remedy is evidently intended to be co-extensive with the wrong. There is nothing restrictive as to the place where the injury happens to be received, nor any word in the act that exempts these claims from the operation of general legal principles.

This is a suit for the value of property taken or destroyed. (See 3d clause of section 5.) It is not an offense we are dealing with, nor a crime that we are seeking to punish. It is neither a criminal proceeding nor a local action; but a suit for the value of property that was taken or destroyed, in a court expressly clothed with jurisdiction to inquire into and finally adjudicate such matters.

In such cases, we hold, no matter where the cause of action arises, the claim may be enforced by the court having jurisdiction of the parties and of the subject-mat-

ter. It was not therefore necessary to give the Court of Claims jurisdiction in express terms over causes of action in civil cases arising beyond the border, if it had jurisdiction of the subject-matter and could acquire jurisdiction over the parties to the suit.

In terms, the Act of March 3, 1891, is very similar to the Organic Act of 1855. That Act gave to the Court of Claims jurisdiction to hear and determine "all claims founded upon any law of Congress * * * upon any contract, express or implied, with the Government of the United States. * * * Has the Court of Claims confined its jurisdiction to claims arising within our territorial limits? Has it not enforced claims arising in every quarter of the globe? For instance, the cases of Mosby and Hamilton.

This is a statutory remedy—a civil action to recover the value of property taken. It is a transitory action and follows the person. Any court of the United States may take cognizance of such action, where they have jurisdiction of the subject-matter and of the parties to the suit. Mitchell *vs.* Harmony 13 Howard, 115. This is a case of trespass *de bonis aspertatis*, and being a transitory action, it is only necessary to lay the place of trial under videlicet, 1 Howard, 241, McKenna *vs.* Kirk. In Dennick *vs.* Central Railroad—103 U. S. p. 441, the court says, "When the act is done for which the law says the person shall be liable, and the action by which the remedy is to be enforced is a personal and not a real action, and is of that character which the law recognizes as transitory and not local, we cannot see why the defendant may not be held liable in any court to whose jurisdiction he can be subjected by personal process, or by voluntary appearance, as was the case here." The court continues: "It is difficult to understand how the

nature of the remedy or the jurisdiction of the courts to enforce it is in any manner dependent on the question whether it is a statutory right or a common law right." It then adds, "Wherever, by either the common law or the statute law of a State, a right of action has become fixed, and a legal liability incurred, that liability may be enforced and the right of action pursued in any court which has jurisdiction of such matters and can obtain jurisdiction of the parties."

In McKenna *vs.* Fisk, 1 Howard, 117, the following points were recognized: In transitory actions, a venue is laid to show where the trial is to take place. It is a legal fiction, devised for the furtherance of justice, and cannot be traversed. In such actions, such a venue is good without stating where the trespass was, in fact, committed, with a scilicet of the county in which the action is brought. In the absence of statutory provision, the courts of the District of Columbia must apply the principles of the common law to such actions, the pleadings and the proofs.

The court in the same case illustrate the principle: If A becomes indebted to B, or commits a tort upon his person, or upon his personal property, in Paris, an action in either case, may be maintained against A in England, if he is there found, upon a declaration alleging a cause of action to have occurred in an English county, in which the action is laid, without taking notice of the foreign place." Lord Mansfield said: "As to transitory actions, there is not a color of doubt but that any action which is transitory may be laid in any county in England, though the matter arises beyond the seas."

The court continue: "It then appears from our books, that the courts in England have been open in cases of trespass other than trespass upon real property * * * for trespasses committed within the realm or out of the

realm, or within or without the King's foreign dominions." "And it also appears from the authorities which have been cited, that in a transitory action of trespass, it is only necessary to lay a venue for a place of trial, and that such venue is good without stating where the trespass was in fact committed, with a *scilicet* of the county, in which the action was brought."

In Mitchell *vs.* Harmony, 13 Howard, 80, the Supreme Court has anticipated this case. There an American citizen took by force from another American citizen in the same State (Chihuahua) of the Republic of Mexico, mules, horses, wagons, goods, &c., amounting to about $100,000. In this case, cattle, sheep, horses, mules, &c., of $75,000 in value were taken from the plaintiff by the defendants by force in the same State, in the Republic of Mexico, and in both cases suits have been brought in the Courts of the United States having jurisdiction of the parties and of the subject-matter, for the recovery of the value of the property taken.

The Supreme Court in Mitchell *vs.* Harmony sustained the jurisdiction. It says: "This was unquestionably a taking of the property by force from the possession and control of the plaintiff, and a trespass on the part of the defendant, unless he can show legal grounds of justification." The court continues: "*The trespass, it is true, was committed out of the limits of the United States.* But an action might have been maintained for it in the Circuit Court for any district in which the defendant might be found upon process against him, when the citizenship of the respective parties gave jurisdiction to a court of the United States." Judgment was given for the plaintiff, notwithstanding the property was taken in the Republic of Mexico, beyond the jurisdiction of the United States and Courts thereof. This seems conclusive.

In this case, if the court has jurisdiction of the subject-matter—which cannot be denied—and has before it all the parties to the suit—which must be admitted, it seems impossible, upon reason or authority, to sustain the defendant's plea.

The Court of Claims, p. 4 of the record, declare "that the statutes of a country do not run beyond its territorial jurisdiction." True, properly understood. Against the opinion of the learned court, I will not venture to oppose mine, but rather that of Alexander Hamilton, expressed in the 82d number of the Federalist. "The judiciary power of every government looks beyond its local or municipal laws and in *civil cases* lays hold of all subjects of litigation *between parties within its jurisdiction*, though the causes of dispute are relative to the laws of the most distant part of the globe. Those of Japan not less than of New York, may furnish the objects of legal discussion to our courts."

We have seen that, in transitory actions, relief may be had where the court has jurisdiction of the subject-matter and of the parties to the suit, no matter where the trespass was committed. If my horse is taken from me in the city of Mexico by a resident of this city, I can sue him here and recover the value of the horse, or, if a note for $1,000 is given me in the City of Mexico by a citizen of the District, upon his return home I can sue the maker and recover the money, notwithstanding "our statutes do not run beyond our territorial jurisdiction." So, if my personal property be taken any where by American Indians, in amity with the United States, without fault or provocation on my part, I can recover the value thereof under the Act of 1891, which confers on the Court of Claims jurisdiction over "all claims for property taken or destroyed by Indians belonging to any

The question here is, not whether "the statutes of a country run beyond its territorial jurisdiction"; but, can civil obligations, arising beyond our territorial limits, be enforced in the courts of the United States, where they have jurisdiction of the subject-matter and of the parties to the suit? If an American, in England, take my personal property from my possession and control by force, without legal grounds of justification, upon his return home, can he plead to an action for damages, that "the statutes of a country do not run beyond its territorial jurisdiction"? Mitchell *vs.* Harmony, 13 Howard p. 80. Or, if an American buy goods in England can he, upon his return home, plead to an action, that "the matter complained of occurred beyond the jurisdiction of the United States, and courts thereof, and that this court has not jurisdiction to entertain this suit?"

Such obligations follow the person. Now then, if, under the Act of March 3, 1891, a suit is instituted to recover the value of property taken in Mexico, is there in this or any other Act of Congress anything that exempts the case from the operation of general legal principles? I find nothing.

band, tribe or nation, in amity with the United States, without just cause or provocation on the part of the owner or agent in charge, and not returned or paid for."

To sustain its judgment, the court below declares, that the United States cannot control or discipline Indians within Mexican territory. This is true. But this suit is not instituted to enforce discipline or control the conduct of anyone. It is merely to enforce a civil obligation arising in the Republic of Mexico. England cannot control or discipline A, who commits a tort on the person or personal property of B in Paris; yet, we find from the case cited above, that B is afforded relief against A in England.

The court also refers us for relief to the Executive Department of the Government. But nations never pay for property stolen by individuals within their limits. They may punish the thief, but never assume the loss.

Who, then, should be responsible but the Indians who committed the trespass or the Government that has assumed the responsibility?

Other positions are taken by the court below: 1. That the Act of 1891 is purely remedial in its nature; 2. That it creates no rights, etc.; 3. That to find the wrongs which it hopes to remedy we must turn to the Act of 1834. 4. That every claim here pending under the remedial statute of 1891 must turn back to the statute of 1834 to establish a right of recovery; 5. That the Act of 1834 limits the claims for Indian depredations and fixes the place of loss as within the Indian Territory, or any State or Territory inhabited by citizens of the United States; 6. That the Act of 1891 must be interpreted by the Act of 1834; 7. In short, that the Court of Claims has jurisdiction over no Indian depredation claim not defined in the act of 1834.

The Act of 1891 enacts that *in addition* to the jurisdiction which now is or may hereafter be conferred upon the Court of Claims, said court shall have and possess jusisdiction and authority to inquire into and finally adjudicate in the manner provided in this act all claims of the following classes, namely: First, all claims for property of citizens of the United States taken or destroyed by Indians belonging to any band, tribe, or nation in amity with the United States without just cause or provocation on the part of the owner or agent in charge, and not returned or paid for. This is the only clause that relates to our case. Here, then, is plenary jurisdiction well defined, in addition to jurisdiction previously conferred to inquire into and finally adjudicate *all* claims for property of citizens of the United States taken or destroyed by Indians, with five conditions annexed:

1. The property taken must be from citizens of the United States.

2. The Indians must be a band, tribe or nation.

3. They must be in amity with the United States.

4. The depredation must have been committed without just cause or provocation.

5. And unless the property is returned or paid for.

Here, then, is full jurisdiction, expressed in language that is plain and free from ambiguity, needing no reference to former statutes to elucidate its meaning. What connection is there between the Act of 1891 and the Act of 1834? The Act of 1891 is an "Act to provide for the adjudication and payment of claims arising from Indian depredations." The Act of 1834 is an "Act to regulate

trade and intercourse with the Indian tribes and to preserve peace on the frontier." It makes no provision for the adjudication and payment of any claims. It confers no jurisdiction whatever on the Court of Claims. The only definition in the act—that of "Indian Territory"—has been repealed and dropped from the statutes, Crowdog Petitioner, 109 U. S. By what arbitrary ruling are we required to turn back to the Act of 1834 to find out what relief we can obtain under the Act of 1891? For the meaning and the scope of the Act of 1891, we must turn to the act itself and not to an act passed sixty years ago for other purposes. Indeed, this learned court, in a case recently decided, February 20th, 1899, Yorke *vs.* U. S. and Apache Indians, 173 U. S., had occasion to say "The act of 1891 is not ambiguous. Its clearness does not need and may not be construced by analogies from other statutes, or from the practice under other statutes. The rule is elemental that language which is clear needs no construction. Under both of the clauses of the Act of 1891, the claims of which jurisdiction was given were strictly identified, &c." See Hamilton *vs.* Rathbone, decided December 15, 1899, by S. C. U. S.

The Act of 1891 having conferred jurisdiction over *all* claims for property taken by Indians &c., upon five conditions, why should we by judicial construction be reduced to *certain* claims set out in the Act of 1834? why identity so plainly the claims in the Act of 1891, to be adjudicated, if we were expected to turn back to the Act of 1834 to find them? Had the Act of 1834 never been passed, would there be no case for relief under the Act of 1891?

Perhaps, the Act of 1834 may not be found quite so restrictive as the court assumes. It may be, that Congress intended even in that act to make the remedy co-exten-

sive with the wrong. The act embraces Indian depredations committed in any state or territory—not of the Union—but "any State or Territory inhabited by citizens of the United States." This depredation was committed on our property in the State of Chihuahua, when we were inhabitants of that state and citizens of the United States. No matter what State or Territory were inhabitated by citizens of the United States, under this clause, they might hope for protection against the depredation of Indians under our control and jurisdiction.

The Act of 1834 deals with depredations committed in the Indian Territory and in any State or Territory inhabited by citizens of the United States. In the Act of 1891, these words are omitted, and all claimants who are citizens of the United States may recover the value of property so taken upon the conditions already enumerated.

We therefore respectfully submit that this suit to recover the value of property taken in Mexico, should have been sustained by the Court of Claims, and that there is nothing in the Act of 1891 so ambiguous as to make it necessary to turn back to the Act of 1834 to ascertain the claims within the jurisdiction of the court.

But, if it should be held, that the value of property thus taken in Mexico, cannot be recovered in the Court of Claims; and that no Indian depredation claim can be enforced under the Act of 1891, unless defined in the Act of 1834; yet, it does not follow, that the defendant's plea should be sustained and the petition dismissed. There is other matter enough, on the face of the petition, to sustain the jurisdiction of the court.

This property, though taken in Mexico, was thence carried or driven by the Indians into the United States. This fact is alleged in the petition and is recited in the

opinion of the court.

It is needless to repeat the rule of the common law, "That when property is stolen and carried by the thief from the place where it is taken through and into other places, that the larceny continues and accompanies the thing stolen from one State to another, as it does from one county to another county in the same State." 12 Vol. Am. & Eng. Ency. p. 796, State *vs.* Johnson, 2 Oreg., 115.

This larceny then continued and accompanied the stock, that was taken in Mexico and driven into New Mexico and Arizona. So that the depredation was committed, as well in the United States, as in the Republic of Mexico. The offense was complete in both countries; and this appears upon the face of the petition.

I therefore conclude, that the jurisdiction of the Court of Claims extends to all claims defined in the Act of 1891; that there are no territorial or other restrictions in the act, that leave these claims to be adjudicated otherwise than upon the principles of the common law; that the cause of action being transitory, and not against the peace, but affecting property, there can be no objection to impleading the defendants wherever they can be found and subjected to the jurisdiction of the court; that the language of the Act of 1891, being plain and free from ambiguity, its meaning and scope must be found in the act itself, and that it cannot be altered and should not be interpreted by an act passed in 1834, for other purposes: that the property, so taken in Mexico, was carried by the Indians into the United States; if the taking was wrong, the possession was wrong; and therefore the offense was complete, the depredation was committed, in both countries.

John Critchett

No. 267.

Reply Brf. of Critcher for Appts.

Office Supreme Court U.S.
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JAMES H. MCKENNEY, Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1899.

Filed April 19, 1900.

THE CORRALITOS COMPANY, *Appellant*,

vs. No. 267.

THE UNITED STATES AND APACHE INDIANS.

BRIEF IN REPLY FOR APPELLANTS.

In their brief, counsel for the Appellees admit, p. 5, "The general principle of law to be that courts may entertain transitory actions for civil injury, wherever committed, if they have jurisdiction of the parties," but think the rule does not apply to this case.

First, because "The rule relates to Courts of general jurisdiction and to litigation between subjects who stand on an equality before the law". No authority is cited. Whether the jurisdiction is general or limited, the question always is:

Has the Court jurisdiction of the subject-matter and of the parties to the suit? As to the other branch of the above proposition, it may be said—*once in Court*, all parties or subjects stand on an equality before the law.

The act of March 3d, 1891, enacts that *in addition* to the jurisdiction which now is or may hereafter be conferred upon the Court of Claims said court shall have and possess jurisdiction and authority to inquire into and

finally adjudicate in the manner provided in this act *all claims* of the following classes, namely :

First, all claims for property of citizens of the United States taken or destroyed by Indians belonging to any band, tribe or nation in amity with the United States without just cause or provocation on the part of the owner or agent in charge, and not returned or paid for. This is the act that gives jurisdiction to the court, and strictly identifies the claims of which jurisdiction is given. Yoke *vs.* United States and Apache Indians, 173 U. S.

A further reason assigned by counsel why the general rule above admitted does not apply, is "that the general principle regarding transitory actions contemplates a trial of the cause under the principles of law prevailing where the cause of action originated." Was this principle followed in Mitchell *vs.* Harmony, 13 Howard, p. 80? Or, in the cases illustrating our position, cited in McKenna *vs.* Fisk, 1 Howard, 117 ?

It is further said, this is not a case of debt or trespass : that it is not alleged that the defendants, or either of them had ever injured the plaintiff. The trespass alleged consisted of driving off by force, without justification, stock of the value of $74,710.00, to the loss and injury of the plaintiff; and that this depredation was committed by Apache Indians from New Mexico and Arizona. The counsel believe we have not sustained our charge against either the United States or the Apache Nations—the only two defendants. But the act gives us the right of action against these defendants whenever property is thus taken by "Indians *belonging* to any band, tribe or nation.

Counsel for the appellee contend, that the statue should be construed strictly. I say, it should be construed rightly. The United States made the law and consti-

tuted the Courts. The citizen expects justice, and will doubtless receive it. Yet we do not see why a strict construction of the law should be invoked for Indian thieves, rather than for industrious citizens. If the Indian is a ward of the nation, let him be punished, if wrong; and protected, if right.

The Act of 1834.

This Honorable Court will say, whether this suit is brought under the Act of March 3, 1891, or the Act of 1834.

Counsel say, the property was not taken to the United States.

Petitions of this sort are generally prepared, signed and sworn to by unprofessional and illiterate men on the frontier. They are seldom drawn with legal precision or grammatically. They often use disjunctives, for conjunctives. It is the pride of the Court of Claims, to discard form for substance. Accordingly, the meaning of the petition is thus expressed by the Court of Claims, in its opinion, p. 3 of the record. "The substance of the petition (so far as important at this time) is that Indians from the United States, stole plaintiffs property in Mexico and took it from Mexico into the United States."

In conclusion the counsel state "that the disposition made of the stock, was doubtless, unknown to the petitioner &c." Being outside the record, it justifies the remark, that depositions now filed in this cause, prove that our branded [redacted] stock, were afterwards found on the San Carlos reservation in the possession of the United States—sold to them by the Indians.

JOHN CRITCHER,
Counsel for Appellant.

Supreme Court U.S.
FILED
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In the Supreme Court of the United States.

OCTOBER TERM, 1908.

THE COMPANION COMPANY
v.
THE UNITED STATES AND ARGUS ZOLLER. } No. 361.

BRIEF FOR APPELLANTS.

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

THE CORRALITOS COMPANY
v.
THE UNITED STATES AND APACHE Indians. } No. 267.

BRIEF FOR APPELLEES.

The petition in the court below alleged that the claimant company, chartered under the laws of the State of New York, was engaged in business in the State of Chihuahua, Mexico; that while so engaged, during the years 1881 and 1882, certain Indians belonging to tribes of the Apaches, which were located in the Territories of New Mexico and Arizona, crossed over into Mexico and camped for weeks and months on lands belonging to the claimant company, and took and drove away certain of their property, consisting principally of horses, cattle, and sheep. For this loss of property the claimant company seeks indemnity under the act of March 3, 1891, entitled "An act to provide for the adjudication and payment of certain Indian depredation claims." (1 Supp. R. S., 2d ed., p. 913.)

The defendants plead that the depredation having been committed in the Republic of Mexico the court was without jurisdiction. The court sustained the plea and dismissed the petition.

The act of March 3, 1891, confers upon the Court of Claims jurisdiction over "all claims for property of citizens of the United States taken or destroyed by Indians belonging to any band, tribe, or nation in amity with the United States." In the terms of this act there is no limitation as to place. As said by Davis, J., in the opinion of the Court of Claims, "Why should there be? The general principle of law is that the statutes of a country do not run beyond its territorial jurisdiction except upon its merchant vessels upon the high seas, usually upon the vessels of its navy, and in some cases (provided for by treaty) upon merchant vessels and citizens within the jurisdiction of the few countries where the privilege of 'extraterritoriality' exists."

This principle is so elementary that it is not deemed necessary to argue it at length. Counsel for the appellant opposes to this statement of the Court of Claims the opinion of Alexander Hamilton as expressed in the 82d number of the Federalist, where it is stated that—

> The judiciary power of every Government looks beyond its local or municipal laws and in civil cases lays hold of all subjects of litigation between parties within its jurisdiction, though the causes of dispute are relative to the laws of the most distant part of the globe. Those of Japan, not less than of New York, may furnish objects of legal discussion to our courts.

But the extent of the judiciary power in taking cognizance of offenses committed in foreign territory is a wholly different question from the extension of the municipal statutes over such territory. The subject under discussion in the Federalist was whether the State courts would have jurisdiction over cases arising under laws to be passed by Congress under the proposed Constitution of the United States. Hamilton expressed his opinion that in every case where they were not expressly excluded they would, of course, take cognizance of the causes to which such legislation might give birth. In this connection he used the language quoted above, which, if it had been applied to the case at bar, must have led the Court of Claims to seek to apply the municipal laws of Mexico to the dispute between the parties to this suit. Its significance is wholly contrary to the supposition that the statutes of a country run beyond its territorial jurisdiction.

The quotation from Hamilton is sometimes used in connection with the following sentence from Westlake on Private International Law, page 54, section 58:

> Rights which have accrued by the law of a foreign state are treated as valid everywhere; cognizance is therefore taken of extraterritorial facts and of persons not generally subject to the jurisdiction.

In *Dennick* v. *Railroad Company* (103 U. S., 11), cited by the appellant, this court held that "wherever either by the common law or the statute law of a State a right of action has become fixed and a legal liability incurred, that liability may be enforced and the right of action pursued in any court which has jurisdiction of such matters

and can obtain jurisdiction of the parties." But that was a case where the liability was incurred under the law of the State where the transaction took place. The court says further, "A party legally liable in New Jersey can not escape that liability by going to New York. If the liability to pay money was fixed by the law of the State where the transaction occurred, is it to be said that it can be enforced nowhere else, because it depended upon statute law and not upon common law?"

Stone v. *The United States* (167 U. S., 178), also cited by the appellant, was an action brought in the United States court in the district of Washington to recover for timber unlawfully cut from lands of the United States in Idaho. The court held that, inasmuch as the gravamen of the injury complained of was the conversion of the timber and not the damage to the real property, the action was not local, but transitory, and could be entertained by any court of the United States having jurisdiction over the parties.

All these cases relate to the enforcement by foreign courts of the law of the place where the cause of action originated; and they do not touch the contention in this case, which is that the court shall apply to a depredation committed in Mexico a statute of the United States, creating liability and providing a remedy.

THIS ACTION NOT ANALOGOUS TO ORDINARY CIVIL CAUSES.

The appellant contends that the question is not whether the statutes of a country extend beyond its territorial jurisdiction, but is, "can civil obligations, arising beyond

our territorial limits, be enforced in the courts of the United States where they have jurisdiction of the subject-matter and of the parties to the suit?" In pursuance of this question he properly states the general principle of law to be that courts may entertain transitory actions for civil injury, wherever committed, if they have jurisdiction of the parties.

Has this rule any application to the case at bar? We think not, for the reasons which follow.

THE COURT OF CLAIMS A COURT OF LIMITED JURISDICTION.

In the first place, the rule relates to courts of general jurisdiction and to litigation between subjects who stand on an equality before the law. This action, on the other hand, is brought in the Court of Claims, which is a court of limited jurisdiction. The Court of Claims has no jurisdiction over any of the parties to this suit except as it is conferred by the special act of Congress of March 3, 1891, and it is to the terms of that act alone that the court must look for the grant of the jurisdiction.

THE DEFENDANTS NOT TRESPASSERS OR DEBTORS.

A further reason is that the general principle regarding transitory actions contemplates a trial of the cause under the principles of law prevailing where the cause of action originated. The examples given in the appellant's brief are cases of debt or trespass in which the individual who wrongfully obtained possession of property or who became indebted to the plaintiff is sued to recover the value of such property or the amount of such

debt. If this were an action of that sort and the case came before a court of general jurisdiction the general principles of law would be applicable, but it was not alleged in this case that the defendants or either of them had ever injured the plaintiff.

The defendants were the United States and the Apache Nation of Indians. The petition alleges that certain individuals belonging to the Apache Nation of Indians took from the claimant company in Mexico property valued at $75,000. Wherein does this give him a right of action, under the general principles of law or under the statutes of the country in which the alleged conversion occurred, against either of the defendants? If he could bring into court the trespasser upon his property, the person who had benefited by the wrongful conversion, his case would be different, and the case of *Mitchell* v. *Harmony*, cited by the appellant, would be pertinent; but his right to recover from the Indian tribe or from the United States must depend solely upon the statute of the United States.

This statute is anomalous in character. It assumes to create and enforce a liability, on the part of an organized political body, for the tortious acts of individuals owing it allegiance. This, without the consent of that political body and regardless of its approval, connivance, consent, or even knowledge of the act complained of. The only analogy to this statute known to the common law is the old statute of Winchester making the hundred responsible for the value of stolen property, on failure to cause a hue and cry to be made for the capture of the thief. A somewhat similar statute has been proposed in

some of the States, providing that the family of a man who has been lynched may recover damages from the county in which such violation of the law took place. It is inconceivable, however, that it should be seriously argued that either the statute of Winchester or such a statute in regard to lynching extended in their application beyond the actual territorial jurisdiction of the locality concerned.

STATUTE SHOULD BE CONSTRUED STRICTLY.

The statute should be construed strictly, because it is a statute granting jurisdiction to a court of limited jurisdiction; because the liability which it enforces is of an extraordinary character, unknown to the common law; because it is a statute giving the right to sue the United States, in derogation of sovereignty. On this head this court has said, in the case of *Leighton* v. *The United States* (161 U. S., 291):

> Nor is this a matter in which the Government is uninterested. In case of an award by the Court of Claims the United States becomes in fact, if not in form, the primary and solvent judgment debtor. The recourse provided over against the Indian tribe, while it may be certain as to amount, is uncertain as to collection, and before any judgments should be rendered binding the United States it is familiar and settled law that the statute claimed to justify such judgment should be clear and not open to debate.

Another reason for a strict construction of the statute is found in the fact that it is legislation by Congress affecting the rights of Indian tribes. In the case of

Marks v. *The United States et al.* (161 U. S., 297) this court said:

> Again, as often affirmed in the decisions in this court, the Indians are, in a certain sense, wards of the United States, and the legislation of Congress is to be interpreted as intended for their benefit.

If there were any doubt whether the jurisdiction conferred by the act of March 3, 1891, included an act committed beyond the territorial jurisdiction of the United States, these considerations would be sufficient to resolve the doubt in favor of the appellees.

THE ACT OF 1834.

The claimant company would have been equally barred of recovery in the Court of Claims on another ground. The act of March 3, 1891, is merely jurisdictional in character and creates no new claims against Indian tribes or against the United States. For the foundation of his claim, the claimant must turn to previous legislation. The right of action for the prosecution of which a forum is provided by the act of March 3, 1891, is derived from the legislation of Congress binding the Indian tribes to make restitution in such cases, and, in the event of their failure or refusal to do so, guaranteeing to the claimant eventual indemnification by the United States.

In the case of *Leighton* v. *The United States* (29 C. Cls. R., 288) the Court of Claims said:

> This act is purely remedial in its nature; it provides a forum where certain alleged rights may be litigated; but it creates no rights except in so far as it imposes a liability on the United States for plain-

> tiff's benefit. To find a wrong which it hopes to remedy, we must turn to the act of 1834.

And

> The act is remedial, therefore, only for claims which existed prior to the passage of the act.

The reason for such reference to the act of 1834 is not at all, as counsel for appellant seems to infer, for the purpose of determining the construction of any ambiguous language in the act of 1891. The decision of the court explains itself; the very fact stated by counsel for appellant that the act of 1834 made no [effectual] provision for the adjudication and payment of any claims, made necessary the act of 1891 conferring jurisdiction of such claims upon the Court of Claims. Under the provisions of the act of 1834 a large body of claims had grown up, had been examined and reexamined in the Interior Department, which had submitted recommendations for payment in many cases, and these claims were pressing upon every Congress for settlement. The act of March 3, 1891, conferred upon the Court of Claims the jurisdiction to determine them; but it did not, as the Court of Claims has said, create any new claims, and did not define old claims, except as it restricted the jurisdiction of the court by certain provisions in regard to the status of the claimants and the Indian tribes.

The act of 1834, referred to by the court in the opinion in the Leighton case, was a continuation of the provisions in the act of May 19, 1796, in the act of March 3, 1799, and in the act of March 30, 1802. It provided that—

> If any Indian or Indians belonging to any tribe in amity with the United States shall, *within the*

> *Indian country*, take or destroy the property of any person lawfully within such country *or shall pass from the Indian country into any State or Territory inhabited by citizens of the United States*, and there take, steal, or destroy, etc.

The same statute defines the term "Indian country," and while that definition, as stated in the appellant's brief, was not carried into the Revised Statutes of the United States, yet it may, as this court has held in *Ex parte Crow Dog* (109 U. S., 556), be referred to for the purpose of ascertaining the meaning of the language in the statute.

Now the claim of the appellant has no existence under this statute unless it be for a depredation committed "within the Indian country" or in a State or Territory inhabited by "citizens of the United States." It is not contended that the "Indian country" of the act of 1834 extended beyond the boundaries of the United States; and it would be a fanciful interpretation of the language of the statute to say that because the claimant company, composed of citizens of the United States, had a ranch and other property in Mexico, and because other Americans might be temporarily residing there, Mexico was therefore "a State or Territory inhabited by citizens of the United States."

There was, therefore, in the case of this appellant no claim in existence under the statute law of the United States for the jurisdiction of the Court of Claims to act upon.

ACT OF 1834 DID NOT COVER DEPREDATIONS COMMITTED BEYOND THE TERRITORIAL LIMITS OF THE UNITED STATES.

If it were necessary to adduce reasons for a proposition which is so self-evident, and which is so clearly expressed by the language of the statute itself, they are not wanting. A sufficient reason may be found in the purpose of the statute. This was, without doubt, to prevent reprisals on the part of the white inhabitants of the frontiers, and thus lessen the danger of Indian wars; and, by fear of pecuniary loss to the tribe, to induce the Indian authorities to restrain their lawless elements from committing depredations. Both these reasons would fail in the case of depredations committed on foreign soil. There the United States would have no interest in restraining hostilities between the Indians and others and would have no power to prevent reprisals. On the other hand, the Indian tribe resident within the limits of the United States would have no power over its members once they had crossed the frontier into Mexican territory.

Another reason is found in the fact that the statute has been expressly extended by act of Congress over new possessions of the United States, acquired after the passage of the original act (9 Stat. L., 587). If the act were operative in the Territory of New Mexico when it was a part of old Mexico why extend it to that Territory by legislation?

Still another, and conclusive, reason is given by Justice Davis in the able opinion of the Court of Claims in this case, where, after citing numerous provisions of the same

statute making detailed regulations in regard to commerce with the Indian tribes and providing for their supervision by officers of the United States, he says:

> The act in all its parts is harmonious and every section shows clearly that Congress was legislating only for Indian tribes within the territorial jurisdiction of the United States. It is impossible to assume that the Congress would attempt to make such detailed regulations as to Indians outside the United States, either in Mexico or Canada, or attempt to prescribe the method in those countries of a statute of the United States or assume in these foreign jurisdictions to provide officers to superintend that enforcement within those friendly nations.

PROPERTY NOT TAKEN TO THE UNITED STATES.

It is contended by counsel for the appellant that whether or not the act of 1834 applied to territory beyond the limits of the United States, jurisdiction is acquired in this case by the fact that the property was brought to the United States, the offense thus having been committed in both countries.

We need not discuss this proposition, as it is not raised by the record; the petition does not allege the fact recited in the appellant's brief. The language in the petition is:

> They (the Indians) frequently camped for weeks and months on our lands, and drove the stock into the Sierra Madre, and killed them *or* drove them out of the State of Chihuahua into New Mexico and Arizona.

There is here no positive allegation that the property was driven into the United States. The conclusion, from the language of the petition, would be rather that the disposition made of the stock, after the Indians drove them into the Sierra Madre Mountains, was unknown to the petitioner, which is doubtless the case.

JOHN G. THOMPSON,
Assistant Attorney-General.

LINCOLN B. SMITH,
Assistant Attorney.

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CORRALITOS COMPANY *v.* UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 267. Submitted April 24, 1900. — Decided May 28, 1900.

The appellant herein filed its original petition in the Court of Claims against the United States and the Apache Indians on September 6, 1892. Subsequently and by leave of court an amended petition was filed March 2, 1894, from which it appears that the petitioner is a corporation chartered under the laws of the State of New York and doing business in the state of Chihuahua, county of Guleana, Republic of Mexico, and that property to the value of nearly seventy-five thousand dollars, belonging to the petitioner, and situated at the time in the Republic of Mexico, was taken therefrom in 1881 and 1882, and stolen and carried off by the Apache Indians, then in amity with the United States, and brought from the Republic of Mexico into the United States. By virtue of the act of Congress entitled "An act to provide for the adjudication and payment of claims arising from Indian depredations," approved March 3, 1891, judgment for the value of the property thus taken by the Indians was demanded. The United States filed a plea in bar, alleging that the claimant ought not to have and maintain its suit, "because the depredation complained of is alleged to have occurred in the Republic of Mexico, beyond the jurisdiction of the United States and the courts thereof, and that the court, therefore, had no jurisdiction to entertain this suit." The plaintiff demurred to the plea in bar as bad in substance. The Court of Claims overruled the demurrer, sustained the plea in bar, and dismissed the petition. *Held* that the judgment of the Court of Claims was right, and it must be affirmed.

THE appellant herein filed its original petition in the Court of Claims against the United States and the Apache Indians on September 6, 1892. Subsequently and by leave of court an amended petition was filed March 2, 1894, from which it ap-

pears that the petitioner is a corporation chartered under the laws of the State of New York and doing business in the state of Chihuahua, county of Guleana, Republic of Mexico, and that property to the value of nearly seventy-five thousand dollars, belonging to the petitioner, and situated at the time in the Republic of Mexico, was taken therefrom in 1881 and 1882, and stolen and carried off by the Apache Indians, then in amity with the United States, and brought from the Republic of Mexico into the United States. By virtue of the act of Congress entitled "An act to provide for the adjudication and payment of claims arising from Indian depredations," approved March 3, 1891, c. 538, 26 Stat. 851, judgment for the value of the property thus taken by the Indians was demanded.

The United States filed a plea in bar, alleging that the claimant ought not to have and maintain its suit, "because the depredation complained of is alleged to have occurred in the Republic of Mexico, beyond the jurisdiction of the United States and the courts thereof, and that the court, therefore, had no jurisdiction to entertain this suit."

The plaintiff demurred to the plea in bar as bad in substance.

The Court of Claims overruled the demurrer, sustained the plea in bar, and dismissed the petition. 33 C. Cl. 342. The petitioner appealed from that judgment to this court.

Mr. John Critcher for appellant.

Mr. Assistant Attorney General Thompson and *Mr. Lincoln B. Smith* for appellees.

Mr. Justice Peckham, after stating the foregoing facts, delivered the opinion of the court.

The very satisfactory opinion of the Court of Claims in this case leaves little to be said by us in affirming the judgment of that court.

It would require very plain language from Congress by which to impose a liability on the part of the United States for the seizure or stealing by Indians of property belonging to a citizen

of the United States, but situated at the time of such seizure or stealing within the confines and jurisdiction of a foreign sovereignty. Generally the government admits no liability for the destruction of the property of its citizens by third parties, even when it occurs within the limits of the United States. Still less reason would exist for the acknowledgment of any such liability for property of its citizens destroyed or stolen within the limits and under the jurisdiction of a foreign nation.

Upon proof of the existence of certain facts the United States, however, at an early day admitted an exceptional liability in favor of its citizens whose property within the United States had been destroyed by friendly Indians. By chapter 30 of the act of May 19, 1796, 1 Stat. 469, provision was made for a boundary line to be established between the United States and various Indian tribes, which was to be clearly ascertained and distinctly marked; and by section 14 of that act it was provided: "That if any Indian or Indians belonging to any tribe in amity with the United States shall come over or across the said boundary line, into any State or Territory inhabited by citizens of the United States, and there take, steal or destroy any horse, horses or other property, belonging to any citizen or inhabitant of the United States, or of either of the territorial districts of the United States," then, in such case, it was made the duty of such citizen to make application to the superintendent, or such other person as the President of the United States should authorize for that purpose, who, being furnished with the necessary documents and proofs, and under the direction of the President, was to make application to the nation or tribe to which the Indian or Indians belonged for satisfaction, and provision was made for obtaining the same, if possible.

The section contained a provision that "In the meantime, in respect to the property so taken, stolen or destroyed, the United States guarantee to the party injured an eventual indemnification."

No particular method was provided for obtaining such indemnification, and it rested with Congress when and how to make it.

The property mentioned in this section, it will be seen, is

property in any State or Territory of the United States, and it must have been stolen or destroyed by Indians belonging to a tribe in amity with the United States, who had come over, or across, the boundary line mentioned in the first section of the statute. The language of the statute is plainly confined to the destruction or stealing of property situated at the time within a State or Territory of the United States. The statute acknowledges and provides for no responsibility or liability for property of citizens of the United States situated within the domain of a foreign State at the time of its seizure or destruction.

By the act approved March 30, 1802, c. 13, 2 Stat. 139, a boundary line was again established between the United States and various Indian tribes, and the fourteenth section of that act again provided for an eventual indemnification by the United States for property lost under the same conditions as were stated in the act of 1796, and no liability was acknowledged, or provided, for any loss or destruction of property outside and beyond the jurisdiction of the United States.

Although there was, subsequent to the act of 1802, frequent legislation by Congress upon the subject of trading with the Indians, yet the liability of the government for property stolen or destroyed remained the same.

No change in regard to such liability was made by the act approved June 30, 1834, c. 161, 4 Stat. 729. Section 17 of that statute provided that: "If any Indian or Indians, belonging to any tribe in amity with the United States, shall, within the Indian country, take or destroy the property of any person lawfully within such country, or shall pass from the Indian country into any State or Territory inhabited by citizens of the United States, and there take, steal or destroy" certain property, substantially the same proceedings as in the former statutes should be taken against the tribe to which the Indians belonged, for recovering the value of the property so taken, and the United States guaranteed eventual indemnification to the citizen whose property was taken, the same as in the former statutes. The "Indian country" mentioned in the act included the country contained within the boundary lines mentioned in

the preceding acts, above referred to. The liability of the government for property was still limited, by the act of 1834, to that taken or destroyed in the Indian country, or in a State or Territory of the United States.

By section 8 of the act approved February 28, 1859, making appropriations for the expenses of the Indian department, so much of the act of 1834 as provided that the United States should make indemnification out of the Treasury for property taken or destroyed in certain cases by Indians trespassing on white men, was repealed, thus taking away the obligation of the government to eventually indemnify the citizen for property taken by the Indians, as provided in the former statutes.

By a general resolution, approved June 25, 1860, 12 Stat. 120, the repeal of the indemnity provision by the act of 1859 above mentioned was directed to be so construed as not "to destroy or impair any indemnity which existed at the date of said repeal." Citizens whose property had been taken or destroyed under the circumstances provided for in the statute of 1834 had generally been paid by deducting the value of the property destroyed from annuities due the respective tribes, without any specific appropriation having been made therefor, though there were some acts passed prior to 1859 for the payment of such claims out of the Treasury of the United States.

These various acts are referred to and a history of the legislation upon the subject of claims for Indian depredations is given in the opinion delivered in the Court of Claims in the case of *Leighton* v. *United States*, 29 C. Cl. 288.

It is evident from the legislation enacted that claims for Indian depredations had prior to 1872 become quite frequent. By section 7 of the Indian appropriation act, approved May 29, 1872, 17 Stat. 165, 190, it was provided that the Secretary of the Interior should prepare and cause to be published such rules and regulations as he deemed necessary to prescribe the manner of presenting claims "arising under existing laws or treaty stipulations, for compensation for depredations committed by the Indians, and the degree and character of the evidence necessary to support such claims." By existing laws or treaty stipulations there was no pretence of any obligation of the govern-

ment to guarantee the eventual payment for property destroyed or stolen beyond the limits of the United States. It was further provided in the act of 1872 that the Secretary should carefully investigate such claims as might be presented, subject to the rules and regulations prepared by him, and report to Congress at each session the nature, character and amount of such claims, whether allowed by him or not, and the evidence upon which his action was based, and it was provided that no payment on account of any claim should be made without a specific appropriation therefor by Congress.

It will be seen that the claims which the Secretary of the Interior was authorized to investigate were claims "arising under existing laws or treaty stipulations." That act did not enlarge the character of the responsibility of the government beyond what it was prior to its passage.

By the Indian appropriation act, approved March 3, 1885, 23 Stat. 362, 376, an appropriation was made for the investigation of certain Indian depredation claims, which, it is obvious, were claims of the description included in the former statutes upon the subject, and the appropriation was plainly not meant to provide for the investigation of claims for property destroyed outside the limits of the United States.

Pursuant to the provisions in these appropriation acts, it seems that the Secretary of the Interior had caused to be examined and allowed numerous claims for the loss or destruction of property by Indians, and had reported the same to Congress, but Congress had made no appropriation to pay them. In addition to the claims thus approved by the Secretary of the Interior and reported to Congress, it is said that a still greater number were pending in the department for investigation, and in this state of affairs Congress passed the act of 1891, 26 Stat. 851, providing as follows:

"That in addition to the jurisdiction which now is, or may hereafter be, conferred upon the Court of Claims, said court shall have and possess jurisdiction and authority to inquire into and finally adjudicate, in the manner provided in this act, all claims of the following classes, namely:

"First. All claims for property of citizens of the United States

taken or destroyed by Indians belonging to any band, tribe or nation in amity with the United States, without just cause or provocation on the part of the owner or agent in charge, and not returned or paid for.

"Second. Such jurisdiction shall also extend to all cases which have been examined and allowed by the Interior Department, and also to such cases as were authorized to be examined under the act of Congress making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes for the year ending June 30, 1886, and for other purposes, approved March 3, 1885, and under subsequent acts, subject, however, to the limitations hereinafter provided."

Here, for the first time, jurisdiction is conferred upon a court to inquire into and finally adjudicate in regard to the validity of claims against the government arising out of Indian depredations, as described in this act. Up to the time of its passage, and since the passage of the act of 1872, claimants had been compelled to rely for compensation for losses so incurred upon a special application to Congress, made in each case to that body directly or through the Secretary of the Interior.

The purpose of Congress in enacting the statute of 1891 undoubtedly was to provide thenceforth a judicial tribunal for the hearing of such claims and for their payment in accordance with the judgment of the court. It is true that the language of the provision in the act of 1891, which confers jurisdiction upon the Court of Claims, differs somewhat from that used in the various prior statutes, which had guaranteed the eventual indemnification of the claimant by the government, but such difference is not in our judgment at all significant of an intention to enlarge the liability of the government to a greater extent than had ever before been recognized.

Considering the prior legislation of Congress in regard to claims for Indian depredations, none of which recognized any liability of the nature of the claim now made, is it reasonably possible for us to say that Congress intended by the act of 1891 to increase the liability of the government, and to extend it to property destroyed within the limits and jurisdiction of a foreign

state, when it has failed to use any language to plainly signify so extraordinary a departure from its past policy? Up to 1891 there is not the slightest ground for asserting that any such obligation had ever been acknowledged on the part of Congress in any legislation enacted by that body. Up to that time it had always confined the liability of the government, in any event, to a claim for the stealing or destruction of property within the limits of the United States, and we think that if any such radical and material departure from the policy of the government from its foundation had been intended by the act of 1891, plain language to accomplish such a change would have been found in that act. We look in vain for any such language.

Instead of enlarging its liability beyond that which it provided for in the earlier statutes, we find that in 1859 Congress repealed the law by which the government became a guarantor for eventual indemnification to the owner for property destroyed by Indians. The act of 1891 again altered that liability, and provided for the rendition of judgment against the government for the value of the property taken or destroyed, and also against the tribe of Indians committing the wrong, if it were possible to identify such tribe, and the judgment in that case was to be deducted from the annuities due the tribe from the United States, as provided in the sixth section, and if payment could not be procured from the tribe, then the amount of the judgment was to be paid from the Treasury of the United States, which payment was to remain a charge against the tribe, and was to be deducted from any annuity fund or appropriation which might thereafter become due from the United States to such tribe.

By this act of 1891, the obligation of the United States as a substantial guarantor is again acknowledged, notwithstanding the act of 1859; but it is acknowledged in the plain language contained in the sixth section, which provides a means of payment of the judgment obtained pursuant to the provisions of the act. Correspondingly plain language would have been used in this act had it been intended to enlarge the general scope of the liability of the government so as to include Indian depredations committed within the borders of a foreign State.

A decision of the question of what would be the nature of an action like this, if between private individuals, whether transitory or not, would give us no aid in determining the meaning of this act of Congress. The jurisdiction of the court depends wholly upon the act, and we must construe its meaning from the language used in connection with the previous legislation on the subject. In so construing the act we have no doubt that it does not include claims for property destroyed or stolen within the limits of a foreign country.

It was said by the Court of Claims, in the opinion delivered in this case, as follows:

"The United States (unless for some express agreement between the two nations) may not discipline or control Indian tribes within the Mexican territory, and, being without power to enter that territory in time of peace without Mexico's consent, is without direct responsibility for what may there occur. Wrongs sustained by a citizen of the United States while in Mexico can only be remedied through the executive branch of the government, and do not present causes of action in the courts. If citizens of the United States resort to Mexico, they may expect, and their government may demand for them, equality of safety and protection with the citizens of that country, an unbiased administration of the laws in relation to them and their property, and any special advantages (if such there happen to be) expressly reserved by treaty. Beyond this there is no right.

"It is not alleged that this plaintiff was subjected to any loss other than that which occurred at the hands of Indians within the territorial jurisdiction of Mexico; to remedy that loss he must resort to the Mexican courts, if the law of that republic happen to provide a remedy through its judiciary for such misfortunes. Failing that, an appeal might possibly be made upon the Mexican government through the executive department of the government of the United States, if the facts so authorize and that department deem such an appeal advisable and wise. In any event, the matter in dispute does not fall within the jurisdiction of this court."

For these reasons, among others, the court came to the conclusion that Congress did not intend by the act of 1891 to en-

large the liability of the government so as to include property destroyed or stolen in foreign territory.

We agree with the results arrived at by the Court of Claims, and think it unnecessary to add to what has been so well said by that court.

The judgment is right, and must be

Affirmed.